INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Argument	5
Conclusion	16

CITATIONS

Cases:

Adger v. *Alston*, 15 Wall. 555	7
Amy v. *Watertown*, 130 U. S. 320	6, 7
B. Altman & Co. v. *United States*, 40 F. 2d 781, certiorari denied, 282 U. S. 863	14
Batesville Institute v. *Kauffman*, 18 Wall. 151	7
Borovitz v. *American Hard Rubber Co.*, 287 Fed. 368	6
Braun v. *Sauerwein*, 10 Wall. 218	9
Brown v. *Hiatts*, 15 Wall. 177	6
Colorado Fuel & Iron Co. v. *Industrial Commission*, 73 Colo. 579	6
Cross v. *Sabin*, 13 Fed. 308	8
Farenholtz v. *Meinshausen*, 181 App. Div. 474	6
Finn v. *United States*, 123 U. S. 227	14
First National Bank v. *Anglo-Oesterreichische Bank*, 37 F. 2d 564	6
Gorski's Case, 227 Mass. 456	8
Hanger v. *Abbott*, 6 Wall. 532	6, 7, 9, 10, 11, 14
Hopkirk v. *Bell*, 3 Cranch 454	6, 9
Industrial Commission of Ohio v. *Rotar*, 124 Ohio 418	8
Industrial Commission v. *Peppas*, 71 Colo. 25	8
Inland Steel Co. v. *Jelenovic*, 84 Ind. App. 373	8
Kendall v. *United States*, 107 U. S. 123	6, 14
Kolundjija v. *Hanna Ore Mining Co.*, 155 Minn. 176	8
Levy v. *Stewart*, 11 Wall. 244	6
Lipmanowich v. *Crookston Lumber Co.*, 168 Minn. 332	8
Lockhart v. *Horn*, Fed. Cases No. 8445, affirmed, 17 Wall. 570	8
McIver v. *Ragan*, 2 Wheat. 25	6, 11
Maryland Cas. Co. v. *Vidigoj*, 207 Ky. 841	6
Musgrave v. *McManus*, 24 N.M. 227	6
Nathan v. *Equitable Trust Co.*, 250 N.Y. 250, reargument denied, 250 N.Y. 612	14

Cases—Continued

	Page
Osbourne v. *United States*, 164 F. 2d 767	10
Poccardi v. *Ott*, 83 W. Va. 166	8
Powell v. *Koehler*, 52 Ohio 103	6
Protector, The, 9 Wall. 687	6
Ross, Adm'r. v. *Jones*, 22 Wall. 576	7
Sadowski v. *Hubbard Steel Foundry Co.*, 100 Ind. App. 233	8
Siplyak v. *Davis*, 276 Pa. 49	6, 8
Smith v. *The Charter Oak Life Ins. Co.*, 64 Mo. 330	8
United States v. *Shaw*, 309 U. S. 495	14
United States v. *Sherwood*, 312 U. S. 584	14
United States v. *Wardwell*, 172 U. S. 48	14
Wall v. *Robson*, 2 Nott & McCord, [S.C.] 498	6
Wirtele v. *Grand Lodge, A.O.U.W.*, 111 Neb. 302	6

Statutes:

	Page
Act of March 3, 1863, 12 Stat. 765, 767	15
Act of June 11, 1864, 13 Stat. 123	6, 15
Act of July 13, 1866, 14 Stat. 152	9
Foreign Claims Act, Sec. 1, as amended, 57 Stat. 66, 31 U. S. C. 224d	14
Judicial Code, Sec. 155, 28 U. S. C. (1940 ed.) 261, now 28 U. S. C. 2502	15
Judicial Code, Sec. 156, 28 U. S. C. (1940 ed.) 262, now 28 U. S. C. 2501	2, 4, 14
Philippine Rehabilitation Act of 1946, 60 Stat. 128, 50 U. S. C. Appendix 1752(b) 1753	
Sec. 102(b)	15
Sec. 103	15

Miscellaneous:

	Page
3 Sutherland, *Statutory Construction* (3d ed. 1943) p. 388	5
1 Wood, *Limitations* (4th ed. 1916) p. 55	5

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 532

STANDARD-VACUUM OIL COMPANY, PETITIONER

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 59-64) is not yet reported.

JURISDICTION

The judgment of the Court of Claims was entered on November 1, 1948 (R. 64). The petition for a writ of certiorari was filed on January 28, 1949. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether, in this action to recover compensation for property taken for military purposes by the United States from petitioner in the Philippine Islands in December 1941 and January 1942, the jurisdictional statute of limitations upon causes cognizable in the Court of Claims was suspended during the Japanese occupation of the Philippine Islands by reason of the fact that petitioner, a Delaware corporation, was unable to obtain complete information about the property taken.

STATUTE INVOLVED

Section 156 of the Judicial Code, 28 U.S.C. (1940 ed.) 262,[1] provides in part as follows:

> Every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court * * * within six years after the claim first accrues. The claims of married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court * * * within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from be-

[1] Now 28 U.S.C. 2501.

ing barred, nor shall any of the said disabilities operate cumulatively.

STATEMENT

On December 5, 1947, petitioner, a Delaware corporation, brought suit in the Court of Claims to recover just compensation for certain of its properties at San Fernando, La Union, La Paz, and Iloilo City, Philippine Islands, which the United States Armed Forces of the Far East (USAFFE), in December 1941 and January 1942, allegedly requisitioned for military purposes or destroyed to prevent capture by the military forces of Japan, with whom the United States was then at war (R. 1). The claims here involved, the Seventh (R. 15) [2] and the Fifteenth (R. 27-28) whose value is but a small portion of the total recovery sought,[3] were added in an amended petition filed on March 24, 1948 (R. 1).

On April 12, 1948, respondent moved to dismiss, as barred under the provisions of Section 156 of the Judicial Code, 28 U.S.C. (1940 ed.) 262, the Fifth claim of the amended petition, that part of the Seventh claim which is stated in paragraphs 64 to 67, inclusive, of the amended petition, and the Fifteenth claim of the amended petition, or in the alternative, so much of the Fifteenth claim as re-

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[2] Specifically, paragraphs 64 to 67, inclusive, of the Seventh claim.

[3] The two claims total $263,132.85, plus interest; the second amended petition prays judgment in the amount of $3,832,935.09, plus interest (R. 29).

lates to the alleged requisition by respondent of petroleum supplies (R. 58). By leave granted subsequent to respondent's motion to dismiss, petitioner, on June 1, 1948, duly filed a second amended petition, from which it appears that the Fifth claim accrued within six years prior to the filing of the petition (R. 1, 12-13).

Prior to the present litigation, at various times from January 16, 1946, to September 10, 1947 (R. 4-5, 7-8, 9, 12, 14, 16, 17, 19, 21, 22, 23, 25, 27), petitioner had sought administrative relief by filing with the United States Army Claims Service, Manila, Philippine Islands, a proof of claim for each of thirteen of the fifteen claims stated in the second amended petition. Such proofs of claim had been filed with the Army Claims Service well within the six-year period of limitations imposed by Section 156 of the Judicial Code, 28 U.S.C. (1940 ed.) 262, upon actions cognizable in the Court of Claims, and claims were subsequently seasonably filed below. However, no such proof of claim was filed with the Claims Service for the claims here involved, and admittedly, unless the running of the statute was suspended, they were not seasonably filed below.

The court below, in answering the question therein raised as to "whether the statute of limitations is suspended by reason of the fact that the plaintiff was unable to make complete and timely claims against the United States by reason of the

occupation of the Philippine Islands by the military forces of the Japanese" (R. 60), noted the fact that proof of certain claims had been filed by petitioner with the United States Army Claims Service on May 3, 1946, and found, therefore, that "At that time, which was over a year and one-half prior to the six-year limitation, it would have been possible for the plaintiff to have filed with this Court proper claims which, even though they may not have been complete and accurate, could nevertheless have been amended as soon as the full facts concerning them came into possession of the plaintiff. The claims could have thus been preserved against the running of the statute of limitations. The language of Section 156 of the Judicial Code, *supra,* is clear and unambiguous * * *. In view of this language employed by Congress, and the circumstances of this case, we do not think that the running of the statute should be tolled as to the claims of the plaintiff * * *." (R. 62-63.) Accordingly, the court below granted respondent's motion to dismiss on November 1, 1948 (R. 64).

ARGUMENT

1. It has long been established that the enumeration by the legislature of specific exceptions to a statute of limitations excludes all others. See 1 Wood, *Limitations* (4th ed. 1916), p. 55; 3 Sutherland, *Statutory Construction* (3d ed. 1943), p. 388. "The general rule is that the language of the act must prevail, and no reason based on apparent in-

convenience or hardship can justify a departure from it." *Amy* v. *Watertown,* 130 U. S. 320, 324; *Kendall* v. *United States,* 107 U. S. 123, 125; *McIver* v. *Ragan,* 2 Wheat. 25; *Musgrave* v. *McManus,* 24 N. M. 227, 232; *Powell* v. *Koehler,* 52 Ohio 103, 118-119. However, one exception has been judicially[4] engrafted upon such statutes. It has been held that the running of the statute is suspended as to enemy aliens during a state of war. *Hanger* v. *Abbott,* 6 Wall. 532; *The Protector,* 9 Wall. 687; *Levy* v. *Stewart,* 11 Wall. 244; *Brown* v. *Hiatts,* 15 Wall. 177; *First Nat. Bank* v. *Anglo-Oesterreichische Bank,* 37 F. 2d 564 (C.A. 3); *Borovitz* v. *American Hard Rubber Co.,* 287 Fed. 368 (N.D. Ohio); *Colorado Fuel & Iron Co.* v. *Industrial Commission,* 73 Colo. 579; *Maryland Cas. Co.* v. *Vidigoj,* 207 Ky. 841; *Wirtele* v. *Grand Lodge, A.O.U.W.,* 111 Neb. 302; *Farenholtz* v. *Meinshausen,* 181 App. Div. 474; *Siplyak* v. *Davis,* 276 Pa. 49; *Wall* v. *Robson,* 2 Nott & McCord [S.C.] 498. The justification for this implied exception is apparently grounded on the rationale of statutes of repose that claims should be extinguished when made stale because of the negligence or laches of the plaintiff. If disability to sue is imposed through no fault of the plaintiff, it is unjust to bar the claim. Such a supervening disability is produced either when intercourse between belligerent litigants is

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[4] This exception has also been engrafted as a result of treaty and subsequent legislation. See, e.g., *Hopkirk* v. *Bell,* 3 Cranch 454; Act of June 11, 1864, 13 Stat. 123.

interdicted and access to each other's courts denied, or when the courts are actually closed because of unsettled conditions.

It is to be noted, however, that not every supervening disability, not the fault of plaintiff, is sufficient to raise an implied exception to the statute of limitations. As Mr. Justice Bradley pointed out in *Amy* v. *Watertown,* 130 U. S. 320, 323-324, in limiting the prior overbroad generalization drawn from *Hanger* v. *Abbott, supra* "It is said by Mr. Justice Strong, in *Braun* v. *Sauerwein,* 10 Wall. 218, 223, 'It seems, therefore, to be established, that the running of a statute of limitation may be suspended by causes not mentioned in the statute itself.' The observation is undoubtedly correct; but the cases in which it applies are very limited in character, and are to be admitted with great caution; otherwise the court would make the law instead of administering it." In line with this policy of "great caution," it was held that statutes of limitation were not suspended as between citizens of the confederate states during the Civil War unless the courts were actually closed.[5] *Lockhart*

[5] State statutes of limitation were held not to be a bar to suit in the *federal courts* located in the insurrectionary states after the Civil War since those courts were closed during the war. *Adger* v. *Alston,* 15 Wall. 555; *Batesville Institute* v. *Kauffman,* 18 Wall. 151; *Ross, Adm'r* v. *Jones,* 22 Wall. 576. The "statute of limitations did not run against suitors having a right to sue in the Federal courts." *Id.* at 577.

It should also be noted that this Court, in the leading case of *Hanger* v. *Abbott,* 6 Wall. 532, distinguished earlier contrary English decisions by pointing out that "all of those decisions were made between parties who were citizens of the same jurisdiction * * *." *Id.* at 540.

v. *Horn,* Fed. Cases No. 8445 (C.C.S.D. Ala.), affirmed, 17 Wall. 570; *Cross* v. *Sabin,* 13 Fed. 308 (C.C.E.D. Tenn.); cf. *Smith* v. *The Charter Oak Life Ins. Co.,* 64 Mo. 330. Statutes of limitation were not tolled during time of war as to an alien national of an allied country, residing therein, *Poccardi* v. *Ott,* 83 W. Va. 166, 168; nor as to alien nationals of non-belligerent countries, residing therein, despite great obstacles to communication and transportation produced by war. *Industrial Commission* v. *Peppas,* 71 Colo. 25; *Inland Steel Co.* v. *Jelenovic,* 84 Ind. App. 373; *Sadowski* v. *Hubbard Steel Foundry Co.,* 100 Ind. App. 233; *Gorski's Case,* 227 Mass. 456; *Kolundjija* v. *Hanna Ore Mining Co.,* 155 Minn. 176; *Lipmanowich* v. *Crookston Lumber Co.,* 168 Minn. 332; see *Industrial Commission of Ohio* v. *Rotar,* 124 Ohio 418; *Siplyak* v. *Davis,* 276 Pa. 49, 58. The difficulties of petitioner were certainly no more severe than those under which plaintiffs labored in the above cases; they were cut from the same cloth. Since the courts of the United States were open during the period in question, and since petitioner is not an enemy alien, but a Delaware Corporation, the above cases would seem dispositive of petitioner's attempt to enlarge the scope of the implied war exception and thus bring itself within its coverage.

In so far as our search of the case-law reveals, the war exception has twice, with "great caution" seemingly been extended beyond the enemy alien

and "closing of the courts" situation. Although petitioner relies on these cases to support a further extension of the war exception herein, we submit that those decisions offer no such support. As the court below noted, after an extensive analysis of the cases, "* * * in all the authorities reviewed above, the courts in each instance were unavailable to the plaintiffs in question" (R. 62).

In *Braun* v. *Sauerwein*, 10 Wall. 218, 223, the question before this Court was whether the Maryland statute of limitations was suspended by the Act of July 13, 1866, 14 Stat. 152, which provided that no suit shall be maintained in any court for the recovery of a tax until appeal shall have been duly made to the Commissioner of Internal Revenue and his decision had thereon. The Court, after discussing *Hopkirk* v. *Bell*, 3 Cranch 454, and *Hanger* v. *Abbott, supra*, concluded that the running of the statute may be suspended by causes not mentioned in the statute itself, and posed the issue thusly:

> Assuming, then, that the act of Congress did, for a time, stop the running of the Maryland statute against the plaintiff, the inquiry remains, how long did the suspension continue? * * * Manifestly, only so long as he was prevented from suing by the act of Congress. The act * * * prohibited a suit until he should appeal to the Commissioner of Internal Revenue, and until his appeal should be decided

> * * *. The interval between the appeal and its decision, then, was the entire period during which he was disabled by the act. If, in fact he was disabled a longer time, the prolonged disability was caused by his own neglect to appeal.

The court then held that the statute of limitations had run through plaintiff's own neglect before the act of Congress could suspend its operation. Thus, aside from the fact that discussion of the war exception was *obiter*, the extension of the *Hanger* v. *Abbott* doctrine to the disability caused by an act of Congress was based on the denial to plaintiff of access to the courts, which is the principle behind the enemy alien exception.

The same rationale—denial of access to the courts—was the basis for the suspension of the statute in *Osbourne* v. *United States*, 164 F. 2d 767 (C. A. 2). In that case, the Court of Appeals reasoned that "All statutes of limitation are based on the assumption that one with a good cause of action will not delay bringing it for an unreasonable period of time; but, *when a plaintiff has been denied access to the courts, the basis of the assumption has been destroyed.*" [Emphasis added] *Id.* at 769.

Here, petitioner does not contend that the courts were unavailable to it, but that, as a result of being unable to secure necessary information, it was impossible for petitioner to obtain appropriate relief. We submit, therefore, that petitioner's cause does not come within the underlying principles of the

war exception. "The difficulties under which the plaintiffs labored respected the trial, not the institution of their suit." *McIver* v. *Ragan,* 2 Wheat. 25, 29. The case of *McIver* v. *Ragan, supra,* relied upon in *Hanger* v. *Abbott, supra* at 542, would appear controlling here. Plaintiffs therein sued in ejectment, and defendants pleaded, as a bar, possession for seven years. No corner of the grant under which plaintiffs claimed was marked except the beginning corner, and that corner, and all others but one, was within the Indian boundary. Although the land in possession of defendants did not lie within Indian territory, since the laws of the United States prohibited all persons from surveying Indian lands, plaintiffs were unable to survey their land and prove defendants within their grant until the Indian lands were ceded to the United States. Nevertheless, Mr. Chief Justice Marshall refused to except plaintiffs from the operation of the statute of limitations, reasoning as follows (2 Wheat. at 29-30):

> Wherever the situation of a party was such as, in the opinion of the legislature, to furnish a motive for excepting him from the operation of the law, the legislature has made the exception. *It would be going far, for this court to add to those exceptions. It is admitted, that the case of the plaintiffs is not within them, but it is contended to be within the same equity with those which have been taken out of the statute; as where the courts of a country are*

closed, so that no suits can be instituted. This proposition cannot be admitted. The difficulties under which the plaintiffs labored, respected the trial, not the institution of their suit. There was no obstruction to the bringing of this ejectment at an earlier day. If, at the trial, a survey had been found indispensable to the justice of the cause, the sound discretion of the court would have been exercised, on a motion for continuance. Had such a motion been overruled, the plaintiffs would have been in the condition of all those who, from causes which they cannot control, are unable to obtain that testimony which will establish their rights. If this difficulty be produced by the legislative power, the same power might provide a remedy; but courts cannot, on that account, insert in the statute of limitations, an exception which the statute does not contain. It has never been determined, that the impossibility of bringing a case to a successful issue, from causes of uncertain duration, though created by the legislature, shall take such case out of the operation of the act of limitations, unless the legislature shall so declare its will. [Emphasis added]

In any event, as found by the court below (R. 62), petitioner was not, in fact, under any disability to bring suit prior to the expiration of the statutory period. "* * * it would have been possible for the plaintiff to have filed with this Court proper claims which, even though they may not have been complete and accurate, could nevertheless

have been amended so soon as the full facts concerning them came into possession of the plaintiff. The claims could have thus been preserved against the running of the statute of limitations." It is historical record that the Japanese occupation of the Philippine Islands ended in February 1945, almost three years prior to the expiration of the statutory period. That sufficient time was afforded petitioner to obtain enough data to petition for relief in the court below is evidenced by the fact that, well within the six-year period, petitioner did file proofs of claim with the Army Claims Service for thirteen of the fifteen claims. There is no indication in the record that the remaining two claims were so different in character that no information at all about them could have been obtained during the long interval of time remaining after termination of Japanese control. Failure to obtain that data can be ascribed only to the oversight or laches of petitioner.

2. As already noted *supra*, pp. 5-8, as a general rule the enumeration by the legislature of specific exceptions to a statute of limitations is to be narrowly construed. This principle has even greater force when applied to the limitation in question, which is a part of an act waiving the sovereignty of the Government to suit. Since the act as a whole is to be narrowly construed in favor of the Government because it infringes upon and restricts sovereignty (*United States* v. *Sherwood*, 312 U. S.

584, 590; *United States* v. *Shaw*, 309 U. S. 495), *a fortiori* any doubts as to the limitation of action provision are to be resolved in favor of the Government. Moreover, this statute is not just a limitation upon the remedy of petitioners, the Act goes to the very jurisdiction of the court below. *Finn* v. *United States*, 123 U. S. 227; *United States* v. *Wardwell*, 172 U. S. 48; *B. Altman & Co.* v. *United States*, 40 F. 2d 781 (C. Cls.), certiorari denied, 282 U. S. 863. Furthermore, since Section 156 of the Judicial Code, 28 U. S. C. (1940 ed.) 262, expressly provides that "no other disability than those enumerated shall prevent any claim from being barred," the utmost of caution is called for before an implied exception is admitted by the courts. Cf. *Kendall* v. *United States*, 107 U. S. 123, 125.

The question before this Court is, therefore, not the same as that presented before *Hanger* v. *Abbott, supra*, and the cases following it. Cf. *Nathan* v. *Equitable Trust Co.*, 250 N.Y. 250, reargument denied, 250 N.Y. 612. The issue therein was whether an implied exception should be read into a state statute copied from 21 Jac. 1, c. 16, which did not provide that the enumerated disabilities were exclusive. Mr. Justice Clifford pointed out in *Hanger* v. *Abott, supra*, at 539, that "the statute of limitations was passed in 1623, more than a century before it came to be understood that debts due to alien enemies were not subject to confiscation. * * * Regarding such debts as an-

nulled by war, the law-makers of that day never thought of making provision for the collection of the same on the restoration of peace between the belligerents." Clearly this observation is not apposite to the legislature which, during the Civil War, by the Act of March 3, 1863, 12 Stat. 765, 767, enacted the period of limitation in question. This is demonstrated by the fact that a year later, the Act of June 11, 1864, 13 Stat. 123, suspended statutes of limitations for that time during which a defendant was beyond the service of process because of the Civil War. Since no such exception was inserted into the Act of March 3, 1863, and since the disabilities expressed were made exclusive, it is a necessary inference that Congress intended no such exception. That exception is not, therefore, to be judicially added.[6]

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[6] It should be pointed out that petitioner's argument that it would be an incredibly harsh and unconscionable rule that denied petitioner the right to sue and extended that right to a Japanese citizen, as an enemy alien, is without merit in this case. Section 155 of the Judicial Code, 28 U.S.C. (1940 ed.) 261, now 28 U.S.C. 2502, provides that only "aliens who are citizens or subjects of any Government which accords to citizens of the United States the right to prosecute claims against such Government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims * * *." Petitioner, who has the burden of proof herein, has made no showing that the Japanese Government permits suits against itself in its courts by citizens of the United States. Thus, whatever the equities of petitioner's argument may be in a suit between individuals, they are irrelevant here.

It should also be noted in this connection that Sections 102(b) and 103 of the Philippine Rehabilitation Act of 1946, 60 Stat. 128, 50 U.S.C. Appendix 1752(b), 1753, provide that compensation thereunder shall not be made to enemy aliens. Similarly, Section 1 of the Foreign Claims Act, as amended,

CONCLUSION

The decision below is correct, and there is no conflict of decisions. We respectfully submit that the petition for a writ of certiorari should, therefore, be denied.

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MARCH 1949.

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57 Stat. 66, 31 U.S.C. 224d, precludes payment to "any national of a country at war with the United States * * * except as the Commission or the local military commander shall determine that the claimant is friendly to the United States."

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